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**1992 Wis Eth Bd 16**  
LOBBYING AND LOBBYISTS; REGISTRATION, LICENSING AND  
REPORTING

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The time and expenses related to the lobbying activities of individuals employed by companies that are members of a trade association that is a principal should be recorded as follows:

- (1) If the individuals are lobbying on the trade association's behalf, and under its supervision or control, the trade association should account for their time and the lobbying expenses that the association incurs;
- (2) If the individuals are lobbying on their employer's behalf, then if the employer otherwise meets the definition of "principal," the employer should account for the employees' time and the lobbying expenses that the employer incurs; and
- (3) If the individuals are lobbying on behalf of both the trade association and the employer, then both the trade association and the employer should undertake the accounting described in (1) and (2).

The exemption for participating in the deliberations of an agency's advisory committee on rulemaking established under §227.13 or of a legislative committee of which the individual is a member extends to preparation and communication with committee members and staff, outside a meeting, that is directly related to committee deliberations. OEB 92-16

March 27, 1992

Facts

- [1] This opinion is based upon these understandings:
- a. Individuals employed by companies that are members of a trade association and lobbying principal, engage in lobbying activities on industry issues.<sup>1</sup>
  - b. The individuals receive salaries from their employers while engaged in these lobbying activities but are not compensated by the trade association.

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<sup>1</sup> § 13.62(10), *Wisconsin Statutes*, provides:

**13.62(10)** "Lobbying" means the practice of attempting to influence legislative or administrative action by oral or written communication with any elective state official, agency official or legislative employe, and includes time spent in preparation for such communication and appearances at public hearings or meetings or service on a committee in which such preparation or communication occurs.

- c. The same individuals may also serve on agencies' advisory committees on rulemaking established under section 227.13, *Wisconsin Statutes*, or on committees of the legislature.

### Questions

[2] The Ethics Board understands your questions to be:

1. How, and to what extent, must a trade association account for expenses and time with respect to the lobbying activities of employees of companies that are members of the trade association but who are not compensated by the Council?
2. Under what circumstances, if any, must a lobbying principal account for the time of one of its employees participating as a member in the deliberations of an agency's advisory committee established under §227.13, *Wisconsin Statutes*, or any committee of the legislature?

### Discussion

[3] First, §13.68(1), *Wisconsin Statutes*, requires an organization that employs a lobbyist (a principal) to report, on a semi-annual basis, the aggregate total amount of lobbying expenditures made and obligations incurred for lobbying activities by the principal and to maintain a contemporaneous record disclosing the time and resources spent on each attempt to influence legislative or administrative action. The expenses and obligations that a trade association must report are *its* expenses and obligations, not those of its member companies. Moreover, a lobbying principal must account for the time only of those individuals through which *it* expends time and resources: its employees, its officers and directors, and other individuals acting under its supervision or control.<sup>2</sup>

[4] Individuals who lobby on "company time," and thus continue to receive salary for lobbying activities, may be considered to be lobbying on behalf of their employers, even if they are purporting to lobby on behalf of a trade association. The issue is: on whose behalf are the individuals really lobbying? Circumstances pertinent to determining whether the individuals are, in reality, lobbying on behalf of their employers include whether there is an identity of interests between the company and the trade association with respect to the issues on which the individual is lobbying; whether the individual is either required or requested by the company to lobby for the trade association; the degree of control the company exercises over the employee's lobbying activities; whether the employee is free to lobby for trade association positions that may differ from or be in conflict with the company's position on those issues; and whether, while engaged in lobbying, the employee

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<sup>2</sup> See 1991 Wis Eth Bd 01.

represents himself or herself as representing only the trade association or as representing both the trade association and his or her company.<sup>3</sup>

[5] With respect to your second question, §13.621(1)(e), *Wisconsin Statutes*, provides that the lobbying law does not apply to "participation as a member in the deliberations of a committee under s. 227.13 or any committee of the legislature." This exemption applies to a member's attendance at committee meetings, a member's outside communications with other committee members and staff that are a normal part of committee work or follow-up, and a member's activities that are directly attributable to preparation for participation in committee deliberations.

#### Advice

[6] The time and expenses related to the lobbying activities of individuals employed by companies that are members of a trade association that is a principal should be recorded as follows:

(1) If the individuals are lobbying on the trade association's behalf, and under its supervision or control, the trade association should account for their time and the lobbying expenses that the association incurs;

(2) If the individuals are lobbying on their employer's behalf, then if the employer otherwise meets the definition of "principal," the employer should account for the employees' time and the lobbying expenses that the employer incurs; and

(3) If the individuals are lobbying on behalf of both the trade association and the employer, then both the trade association and the employer should undertake the accounting described in (1) and (2).

[7] The exemption for participating in the deliberations of an agency's advisory committee on rulemaking established under §227.13 or of a legislative committee of which the individual is a member extends to preparation and communication with committee members and staff, outside a meeting, that is directly related to committee deliberations.

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<sup>3</sup> See 1992 Wis Eth Bd 02; EB 673 (May 15, 1991).